Supreme Court, U.S.
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No. 99-1130

IN THE
Supreme Court of the United States

HERBERT W. G. CLANTON,

Petitioner,

v.

PEOPLE OF THE CHARTER TOWNSHIP OF REDFORD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the dismissal of Petitioner's appeal for failure to perfect the appeal constitutes a violation of his constitutional rights?

STATEMENT OF THE CASE

This case began in the State District Court where Petitioner Herbert Clanton faced a civil infraction ticket for speeding. In response, Mr. Clanton asserted a counter claim alleging violations of his constitutional rights. The District Court granted the Township's motion to dismiss Clanton's counter claim. Mr. Clanton appealed the District Court's decision to the Wayne County Circuit Court. Judge Jeanne Stempien of the Wayne County Circuit Court dismissed Clanton's appeal for failure to properly perfect his appeal. After the Michigan Court of Appeals denied Mr. Clanton's appeal from the decision of the Circuit Court, he filed an Application for Leave to Appeal with the Michigan Supreme Court. On January 26, 1999, the Michigan Supreme Court entered an Order denying Petitioner's Application for Leave to Appeal. Petitioner's Motion for Rehearing was denied by the Michigan Supreme Court.

REASONS FOR DENYING THE WRIT

THIS COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI BECAUSE DEFENDANTS' APPEAL WAS PROPERLY DISMISSED FOR FAILURE TO PERFECT THE APPEAL AND HIS CONSTITUTIONAL RIGHTS WERE NOT VIOLATED.

In the instant case, Petitioner argues that the Circuit Court erred in dismissing his appeal and that the denial of his Application for Leave to Appeal by the Michigan Supreme Court and the Court of Appeals constitutes a denial of due process and equal protection of the law in violation of the Michigan and the United States Constitutions.

There is no basis in law for Petitioner's argument. Petitioner's appeal was properly dismissed for failing to comply with the court rules for perfecting an appeal.

MCR 7.101(C)(2)(d) specifically requires that the appellant must order a copy of the full transcript and secure payment for it:

> **(C) Manner of Taking an Appeal; Appeal of Right.**
>
> * * *
>
> (2) Other Requirements. In addition to doing the acts required by subrule (C)(1), no later than the time the claim of appeal is filed, the appellant must do the following:
>
> * * *
>
> (d) Order in writing a copy of the full transcript and secure payment for it. On the appellant's motion, with notice to the appellee, the trial court may order that a lesser portion, or none, of the proceedings be transcribed . . .

Further, MCR 7.101(F) provides that the appellant must file with the trial court the transcripts:

> **(F) Record on Appeal.**
>
> (1) Within 28 days after filing the claim of appeal, the appellant must file with the trial court the transcript or a copy of the reporter's or recorder's certificate and a statement that the transcript is not yet available.

Read together, the above court rules make clear that it is the appellant's duty to ensure that the proper steps have been

taken so that the transcript would be forwarded to the Circuit Court. These steps include the ordering of the transcript and securing payment for it. The appellant could file with the Court the transcript or a copy of the reporter's or recorder's certificate and statement that the transcript is not yet available.

In the instant case the Petitioner failed to take any of the required steps to provide the Court with the transcript.

The transcript of the relevant proceedings is essential to appellate review. Thus, the appellant's appeal is subject to dismissal if the appellant fails to make the transcript available to the appellate court. MCR 7.101(G) gives the Court the authority to dismiss the appeal under these circumstances:

> **(G) Dismissal of an Appeal.** If an appellant does not comply with subrule (C)(2) or (F)(1) the appeal may be considered abandoned, and the trial court may dismiss the appeal on seven days notice to the parties, unless the trial court or circuit court has granted a motion for further time. The trial court clerk must promptly notify the circuit court of a dismissal, and the circuit court shall dismiss the claim of appeal . . .

Consistent with the court rules, Michigan Courts have repeatedly held that the appellant's failure to provide the Court with the transcript precludes appellate review. In *McKim v Green Oak Twp Bd*, 158 Mich. App. 200, 404 N.W. 2d 658 (1987), the defendant/appellant contended that the trial court erred in awarding plaintiff attorney fees. The Court of Appeals held that the issue of the award of attorney fees was abandoned on appeal because the appellant failed to provide the court with the transcript. The Court concluded:

> In this case, defendants have not provided this court with a transcript of the hearing at which the trial court ruled that defendant was entitled to attorney fees. It is therefore impossible for us to determine whether . . . the trial court properly exercised its discretion in making the award. Defendants must be deemed to have abandoned the issue on appeal. 158 Mich App at 208.

In *Nye v Gable, Nelson & Murphy*, 169 Mich. App. 411; 425 N.W. 2d 797 (1988), the Court of Appeals in affirming summary disposition in favor of defendant/appellees stated:

> Given plaintiff's failure to secure a transcript of the motion hearing, we are unable to review the trial court's decision to determine if it erred in concluding that the applicable period of limitation had run since, without the necessary transcripts, we have no way of knowing the basis of the trial court's ruling. We believe it inappropriate to conclude that the trial court was wrong when we do not even know the trial court's reasoning or have benefit of reviewing the arguments made before the trial court at the motion hearing. 169 Mich App at 413.

In the instant case, the Petitioner failed to order the transcript or to take the necessary steps to provide the Court with the transcript.

Contrary to Petitioner's argument, the dismissal of his appeal and denial of his Application for Leave to Appeal for failure to perfect his appeal does not constitute a violation of his constitutional rights. The United States Supreme Court in *Logan v Zimmerman v Brush Co.*, 455 U.S. 422, 437 (1982), held that the state may properly adopt reasonable

procedural requirement for triggering the right of adjudication and that termination of a claim for failure to comply with reasonable procedural rule does not constitute a denial of due process. Similarly, in the instant case, the rule requiring Petitioner to perfect his appeal is not a violation of his constitutional rights, but rather a necessary and reasonable procedure for effective exercise of appellate review. Since Petitioner failed to comply with the reasonable procedural rule requiring him to secure the transcript of the relevant proceedings, appellate review was precluded and the dismissal of his appeal as well as the denial of his Application to appeal was warranted.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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